UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/AC.241/35
8 June 1995

ENGLISH
Original : ENGLISH

INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR
THE ELABORATION OF AN INTERNATIONAL CONVENTION
TO COMBAT DESERTIFICATION IN THOSE COUNTRIES
EXPERIENCING SERIOUS DROUGHT AND/OR
DESERTIFICATION, PARTICULARLY IN AFRICA
Seventh session
Nairobi, 7-18 August 1995
Agenda item 2

# DRAFT FINANCIAL RULES OF THE CONFERENCE OF THE PARTIES, ITS SUBSIDIARY BODIES AND THE PERMANENT SECRETARIAT

Note by the Secretariat

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## I. INTRODUCTION

1. At its sixth session, the INCD adopted a resolution on the organization and programme of work for the interim period (document A/AC.241/L.24). Paragraph 1(a) of that resolution allocated to Working Group I the responsibility for carrying out preparatory work for the Conference of the Parties on, *inter alia*, the issue of financial rules.

2. Paragraph 4 of the same resolution requested the Interim Secretariat to prepare a document on the financial rules with a view to facilitating INCD deliberations at the seventh session. The Committee's request was made against the background of article 22, subparagraph 2(e) of the Convention which requires the Conference of the Parties (COP) to agree upon and adopt, by consensus, financial rules for itself and any subsidiary bodies.

3. In response to the Committee's request, the Interim Secretariat prepared this note accompanied by an annex containing a proposed draft of the financial rules. The present document should be read in conjunction with document A/AC.241/34 on the designation of the Permanent Secretariat and document A/AC.241/36 on the Programme of Work and Budget.

4. The note briefly provides the necessary explanatory background for the draft financial rules, which were largely derived from well-known precedents and practices in other environmental conventions. The latter include the financial rules of: the United Nations Framework Convention on Climate Change (Climate Change Convention), the Convention on Biological Diversity (Biodiversity Convention), the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), the Vienna Convention for the Protection of the Ozone Layer (Vienna Convention) and its Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention). The Interim Secretariat also consulted closely with staff members of some of the conventions concerned.

5. The proposed financial rules are drafted on the assumption that there will be an institution (referred to in the draft rules as the "relevant institution") providing financial management services to the Permanent Secretariat.

6. The draft rules attempt to cover financial aspects that could apply irrespective of, and without prejudice to, decisions the Conference of the Parties (COP) ultimately takes with regard to:

(a) the physical location of the Permanent Secretariat; and

(b) the relevant institution.

## II. FINANCIAL PERIOD

7. Budget estimates are usually prepared for two years, a biennium, under the United Nations system. Draft rule 2 is framed accordingly. The Committee may wish to consider the desirability of estimates for longer periods, for example two bienniums. This would facilitate financial planning, particularly if the funds established pursuant to draft rules 7,9 and 10 were set up for a similar period. Several related conventions (CITES and the Vienna Convention) use financial periods longer than a biennium. However, in the early years of Convention implementation, there might be dangers in using a longer period due to insufficient experience in making accurate long-term projections.

## III. BUDGET

8. Upon the entry into force of the Convention, the COP, as the supreme body and a distinct legal entity, will adopt a Convention budget. This budget will project expenditures for sessions and activities of the COP and its subsidiary bodies, as well as for the functions of the Permanent Secretariat.

### A. Currency of denomination

9. A number of conventions' financial rules denominate budget estimates in United States dollars. However, this trend exposes Parties to the risks of currency fluctuations. The Committee might, therefore, wish to take account of currency fluctuations by choosing an appropriate convertible currency other than United States dollar to officially denominate budget estimates. Draft rule 3 so provides, following the precedent of the financial rules of the CITES Convention. Factors that would influence the currency choice include:

(a) the country where the Permanent Secretariat is located, since the bulk of its expenditures would probably be made in the currency of that country; and

(b) the procurement sources and other relevant procedures of the institution or institutions providing administrative and financial services to the Permanent Secretariat.

### B. Method of adoption

10. The financial rules of some environmental conventions specify the voting majorities required in cases where consensus is not reached on financial questions, such as the adoption of a budget. The draft rules in the annex, taking a simpler approach, do not do so. This implies that the provisions of the rules of procedure of the COP regarding the majority required for decisions on substantive matters would apply. As the rules of procedure are presently drafted in document A/AC.241/38, this would mean that a two-thirds majority would be needed. In practice, this turns out to be the same majority specified in the financial rules of many conventions such as the Basel Convention, CITES and the Vienna Convention.

11. The COP might wish to consider other devices to facilitate approval of the budget. One possibility is an informal arrangement, not specified in the financial rules, whereby an ad hoc working group, would review administrative and budgetary proposals before they are considered by the COP. The COPs of the Climate Change Convention and the Basel Convention, for example, have used such a device.

### C. Transfers between budget lines

12. Connected to the issue of budget approval is the consideration of transfers between budget lines. As a general rule, COPs of environmental conventions set limits for this type of transfer to ensure that the Parties' contributions are used for the purposes agreed upon. However, there may be a need to make provisions for unexpected circumstances requiring transfers beyond the limits. Prior authorization by the Bureau of the COP for such transfers is one way to accomplish this. The financial rules of both the Basel Convention and CITES employ such devices. Rule 6 in the annex, is drafted accordingly. Document A/AC.241/36 also deals with this issue from the standpoint of the budget's format.

## IV. FUNDS

### A. Types of funds

13. Standard practice for environmental conventions is to establish a set of funds, often referred to as general funds, trust funds or special funds, to which contributions are made and from which expenditures take place to finance various activities of the COP, its subsidiary bodies and the Permanent Secretariat. Normally, there is a general fund to receive contributions following a scale and a separate trust fund or funds, some of which could contain sub-accounts, to receive other contributions. Following the precedent of the INCD process, draft rule 10 also provides for a separate special fund to support the participation of developing country representatives in sessions of the COP and its subsidiary bodies.

### B. Working capital reserve

14. The experience of other environmental conventions shows that temporary shortfalls of funds sometimes occur, because of Parties' internal procedures in making contributions, exchange rate fluctuations and other factors. This could endanger the continuity of activities carried out pursuant to the Convention. One remedy is to secure reimbursable advances from the institution providing financial management services to the Permanent Secretariat but, depending on the institution, this may not always be possible. Therefore, draft rule 8 provides for the establishment of a working capital reserve within the General Fund, following the recent precedent of the financial procedures of the Climate Change Convention. The reserve would be set by the COP as a percentage of expenditures during the financial period.

## V. CONTRIBUTIONS

### A. Scale of contributions

15. The scale for contributions to the regular budget of the United Nations is widely used as a basis for the scales of environmental conventions. The United Nations scale takes account of a number of economic and financial factors, including population and gross national product. That scale is fixed and reviewed periodically by the United Nations Committee on Contributions, which makes adjustments when there is a substantial change in the relative capacity of a country to contribute. The Committee on Contributions would also be able to provide a theoretical rate of contributions for those State Parties to the Convention that are not members of the United Nations but participate in its activities.

16. Draft rule 13 takes the United Nations scale as a basis with a few adjustments common in convention practice. One adjustment exempts Parties who would pay less than 0.01 percent of the total. This would avoid the substantial collection and processing costs incurred in gathering very small contributions.

### B. Contributions not subject to scale

17. The draft rules provide for contributions not subject to the scale from Parties and a wide variety of other sources. Following common practice recently adopted in the financial rules of the Climate Change and Biodiversity Conventions, draft rule 15 allows donors to earmark such contributions for specific purposes through agreement with the head of the Permanent Secretariat.

18. Contributions outside the scale could be furnished from, *inter alia*, the government hosting the Permanent Secretariat, other governments, organizations as well as the institution or institutions providing administrative support to it. Such contributions could be in kind but in some cases could involve transfers to the Trust Fund or Special Fund established pursuant to draft rules 9 and 10. Document A/AC.241/34 discusses these matters in more detail.

### C. Currency of Payment

19. Section III.A above raised the issue of denominating budget estimates in a currency that would minimize the effect of exchange fluctuations on them. A similar, and in some ways more serious, question arises with respect to the currencies in which contributions are denominated and paid. Depending on the currencies chosen, contributions could significantly fall short of, or exceed, budgeted expenditures as exchange rates change. Therefore, contributions would then be denominated in the same currency as budget estimates.

## VI. ADMINISTRATIVE SUPPORT CHARGES

20. The institution providing financial management services to the Permanent Secretariat would incur administrative support costs. Reimbursement for such costs is often handled by taking out a fixed percentage of contributions.

However, the trend is increasingly for the COP to negotiate the amount of reimbursement with the relevant institution. Both the financial rules of the Biodiversity and the Climate Change Conventions allow for this. Draft rule 22 follows suit.

21. In matters not of direct concern to the Convention budget such as its approval and the determination of a scale for contributions, the financial rules of the institution providing financial management services will, as draft rule 1 indicates, generally apply. However, adjustments might have to be negotiated in some instances to preserve the autonomy of the COP or to reduce costs. The negotiation of reimbursement for support costs is one such case.

## VII. TRANSITIONAL PERIOD

22. Should the COP meet for the first time late in a calendar year, there might be insufficient time before the start of the first financial period to put in place the institutional arrangements contemplated by the financial rules. At a later stage, the INCD might have to consider how to deal with this contingency. One possibility would be to temporarily channel contributions to, and make expenditures from, the two funds established pursuant to General Assembly resolution 47/188. Another possible source of temporary liquidity could consist of contributions from the government hosting the Permanent Secretariat.

## VIII. OPTIONS FOR FUTURE CONSIDERATION

23. The Secretariat will need guidance on ways in which it can assist in preparing for further discussion of the financial rules in Working Group I at the eighth session of the INCD. If the Committee wished, the Secretariat could provide additional information or analysis on particular rules. It could also prepare a draft negotiating text reflecting the views, comments and proposals of delegations at the seventh session.

**ANNEX**

## Financial Rules for the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, its subsidiary bodies and the Permanent Secretariat

### Scope

1. The present rules shall govern the financial administration of the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, its subsidiary bodies and the Permanent Secretariat. In so far as not specifically provided by the present rules, the Financial Regulations and Rules of [the relevant institution] shall apply, unless the Conference of the Parties and the head of [the relevant institution] otherwise agree.

### Financial Period

2. The financial period shall be a biennium, of which the first calender year shall be an even year.

### The Budget

3. The head of the Permanent Secretariat shall prepare the budget estimates in [an appropriate convertible currency] showing projected income and expenditures for each year of the biennium concerned. For ease of reference, he or she shall also accompany the estimates with comparable indicative figures in United States dollars. He or she shall dispatch the estimates to all Parties to the Convention at least 90 days before the opening of the ordinary session of the Conference of the Parties at which the budget is to be adopted.

4. The Conference of the Parties shall, at an ordinary session, consider the budget estimates and adopt a budget prior to the commencement of the financial period that it covers.

5. Adoption of the budget by the Conference of the Parties shall constitute authority to the head of the Permanent Secretariat to incur obligations and make payments for the purposes for which the appropriations were approved and up to the amounts so approved, provided always that, unless specifically authorized by the Conference of the Parties, commitments shall be covered by related income.

6. The head of the Permanent Secretariat may make transfers within each of the main appropriation lines of the approved budget. He or she may also make transfers between such appropriation lines up to limits which the Conference of the Parties may set from time to time. For any transfers above the approved limits, the head of the Permanent Secretariat shall seek the prior authorization of the Bureau of the Conference of the Parties.

## Funds

7. A General Fund for the Convention shall be established by the head of [the relevant institution] and managed by the head of the Permanent Secretariat. Contributions made pursuant to subparagraphs 12(a) shall be credited to the General Fund, and all expenditures made pursuant to paragraph 5 shall be charged to the General Fund.

8. There shall be established, within the General Fund, a working capital reserve maintained at a percentage of budget expenditures for a financial period. That percentage shall, periodically, be set by the Conference of the Parties. The purpose of the working capital reserve shall be to ensure continuity of operations in the event of a temporary shortfall of funds. Drawdowns from the working capital reserve shall be restored from contributions as soon as possible.

9. A Trust Fund shall be established by the head of [the relevant institution] and managed by the head of the Permanent Secretariat. The Trust Fund shall receive contributions pursuant to subparagraphs 12(b)and(c), other than those specified in paragraph 10.

10. A Special Fund shall be established by the head of [the relevant institution] and managed by the head of the Permanent Secretariat. The Special Fund shall receive contributions pursuant to subparagraphs 12(b)and(c), earmarked to support the participation of representatives of developing country Parties affected by desertification and/or drought, particularly the least developed among them, in the sessions of the Conference of the Parties and its subsidiary bodies.

11. In the event, the Conference of the Parties decides to terminate a fund established pursuant to the present rules, it shall so advise the head of [the relevant institution] at least six months before the date of termination so decided. The Conference of the Parties shall decide, in consultation with the head of [the relevant institution], on the distribution of any uncommitted balances after all liquidation expenses have been met.

## Contributions

12. The resources of the Conference of the Parties shall comprise:

(a) annual contributions made by Parties to the Convention based on the scale set forth in the appendix to the budget;

(b) other contributions made by Parties in addition to those made pursuant to subparagraph(a);

(c) contributions from States not Parties to the Convention, as well as governmental, intergovernmental and non-governmental organizations, and other sources;

(d) the uncommitted balance of appropriations from previous financial periods attributed to the fund concerned; and

(e) miscellaneous income attributed to the fund concerned.

13. The Conference of the Parties shall determine the scale of contributions referred to in subparagraph 12(a). The scale shall be based on the United Nations scale of assessment as may be adopted from time to time by the General Assembly, with adjustments to:

(a) take account of contributions of Parties which are not members of the United Nations, as well as those of regional economic integration organizations that are Parties; and

(b) provide that no Party shall contribute less than 0.01 per cent of the total, that no one contribution shall exceed 25 per cent of the total, and that no contribution from a least developed country shall exceed 0.01 per cent of the total.

14. In respect of contributions made pursuant to subparagraph 12(a):

(a) contributions for each calender year shall be due on or before January 1 of that year; and

(b) each Party shall, as far in advance as possible of the date due for the contribution, inform the head of the Permanent Secretariat of the contribution it intends to make and of the projected timing of that contribution.

15. Contributions made pursuant to subparagraphs 12(b)and(c) shall be used in accordance with such terms and conditions, consistent with the objectives of the Convention, as may be agreed by the head of the Permanent Secretariat and the contributor. Contributions to the Trust Fund referred to in paragraph 9 shall, as appropriate, be placed in sub-accounts.

16. Contributions made pursuant to subparagraph 12(a) from States and regional economic integration organizations that become Parties to the Convention after the beginning of a financial period shall be made pro rata temporis for the balance of that financial period. Consequent adjustments shall be made at the end of each financial period for other Parties.

17. All contributions shall be paid in [an appropriate convertible currency] or its equivalent in a convertible currency into a bank account to be designated by the head of [the relevant institution] in consultation with the head of the Permanent Secretariat. The amount of any payment shall be equal, at least, to the amount payable in [an appropriate convertible currency] on the day the contribution is made.

18. The head of the Permanent Secretariat, or the head of [the relevant institution] shall acknowledge promptly all pledges and contributions and shall inform the Parties, once a year, of the status of pledges and payments of contributions.

19. Contributions not immediately required shall be invested prudently in appropriate financial instruments at the discretion of the head of [the relevant institution]. The resulting income shall be credited to the appropriate fund or funds referred to in paragraphs 7, 9 and 10.

## Accounts and audit

20. The accounts and financial management of all funds governed by the present rules shall be subject to the internal and external audit process of [the relevant institution].

21. During the second year of the financial period [the relevant institution] shall provide the Parties with an interim statement of accounts for the first year of the financial period. [The relevant institution] shall also, as soon as practicable, provide to the Parties a final audited statement of accounts for the full financial period.

## Administrative support costs

22. The Conference of the Parties, under such terms as may from time to time be mutually agreed upon, shall reimburse the [relevant institution] from the funds referred to in paragraphs 7, 9 and 10, as the case may be. The reimbursement shall be made for the purposes of services rendered, including the administration of the relevant fund by the [relevant institution], to the Conference of the Parties, its subsidiary bodies and the Permanent Secretariat.

## Amendments

23. Any amendment to the present rules shall be adopted by the Conference of the Parties by consensus.

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